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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Steven L. Sapp,)	No. CV 05-051-TUC-FRZ
Petitioner,)	
vs.)	ORDER
Charles Ryan, et al.,)	
Respondents.)	

Before the Court for consideration is the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 filed by Petitioner Steven L. Sapp in this action and the Report and Recommendation of the Magistrate Judge, recommending the dismissal of the Petition.

This matter was referred to Magistrate Judge D. Thomas Ferraro pursuant to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure for further proceedings and report and recommendation.

Magistrate Judge Ferraro issued his Report and Recommendation, recommending that the Court enter an order denying the Petition for Writ of Habeas Corpus and dismissing this action in its entirety as untimely under the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. § 22543(d)(“AEDPA”), based on Petitioner’s failure to establish entitlement of statutory or equitable tolling.

The Report and Recommendation sets forth the factual and procedural history of Petitioner’s state court proceedings and the conviction at issue.

1 Petitioner seeks review on nine separate grounds of his conviction in Cochise County
2 Superior Court of Arizona, case number CR-98000452, in which Petitioner was convicted
3 by jury on March 18, 1998 of (1) once count of knowingly possessing a dangerous drug for
4 sale; and (2) one count of resisting arrest, from events which occurred on or about October
5 5, 1998. Petitioner was sentenced on June 14, 1999 to presumptive terms of two and one-half
6 years for possession for sale and one year for resisting arrest, to be served concurrently. The
7 trial judge ordered that these sentences run consecutive to the sentences imposed that same
8 date in Petitioner's two other state court cases, in which Petitioner was sentenced to
9 concurrent terms of nine years and three months on a drug possession charge, a one year and
10 nine months on a paraphernalia possession charge.¹

11 As set forth in detail in the Report and Recommendation, Petitioner has not
12 demonstrated that an extraordinary circumstance prevented him from timely filing, and
13 therefore, Petitioner failed to reach the high threshold to establish entitlement to statutory or
14 equitable tolling.

15 Petitioner filed his objections to the Report and Recommendation pursuant to 28
16 U.S.C. §636(b), arguing both that the present petition and accompanying habeas petitions²
17 were timely and also "that an extraordinary circumstance prevented him from timely filing
18 as he diligently pursued his rights," challenging the state court rulings on both procedural and
19 substantive grounds, and further alleging miscarriage of justice.

20 The Court finds, after consideration of the matters presented and an independent
21 review of the record herein, that the Petition should be denied and this action be dismissed
22 as recommended.

24 ¹Petitioner was also convicted of other felony offenses in Cochise County Superior
25 Court in unrelated, unconsolidated cases CR 98000325 and CR 97000484(B), and sentenced
26 in all three cases on the same date.

27 ²Petitioner filed CV 05-050-TUC-FRZ; CV 05-051-TUC-FRZ and CV 05-052-TUC-
28 FRZ on January 27, 2005, challenging the unrelated, unconsolidated convictions in case
numbers CR-98000325, CR-98000452 and CR-97000484(B), respectively.

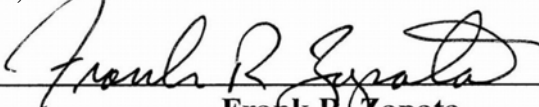
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Based on the foregoing,

IT IS ORDERED that Magistrate Judge Ferraro’s Report and Recommendation [Doc. 23] is hereby ACCEPTED AND ADOPTED as the findings of fact and conclusions of law by this Court;

IT IS FURTHER ORDERED that the Petition for Writ of Habeas Corpus is DENIED;
IT IS FURTHER ORDERED that judgment be entered accordingly.

DATED this 14th day of September, 2011.



Frank R. Zapata
Senior United States District Judge